

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JIMMIE LEWIS,

Plaintiff,

v.

DR. SYLVIA FOSTER, NURSE
ASSISTANT ROBERT N. GRAY, MR.
JOHNSON 1, MR. JOHNSON 2, LANCE
SAGERS, and DAVE MOFFETT,

Defendants.

Civil Action No. 04-1350-GMS

MOTION TO ACCEPT FILINGS AS TIMELY

Undersigned counsel for defendants Robert N. Gray, David Moffett and Lance Sagers ("Moving Defendants") respectfully moves the Court for an order determining that the motion for summary judgment of the Moving Defendants and the opening brief in support thereof be deemed timely filed with the Court. As grounds for its motion, counsel represents as follows:

1. Pursuant to this Court's Order dated November 26, 2007 (D.I. 232), summary judgment motions and supporting briefs were ordered to be filed on or before March 26, 2008.
2. Undersigned counsel had prepared a Motion for Summary Judgment and Opening Brief with exhibits for filing on March 26, 2008. Via electronic mail sent on March 26, 2008, at 4:02 p.m., the Clerk of the Court confirmed undersigned counsel's correct log in identification and password for the Court's Case Management/Electronic Case Filing ("CM/ECF") system.

3. Despite numerous attempts to file Moving Defendants' motion and brief electronically on the afternoon of March 26, 2008, the CM/ECF system would not accept Moving Defendants' papers for filing.

4. Moving Defendants' Motion, Brief and exhibits were all completed on March 26, 2008, and copies were served on plaintiff via first class mail and on counsel for defendant Foster via hand delivery on that date.

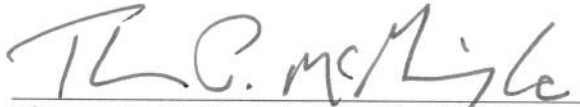
5. The CM/ECF system accepted Moving Defendants' motion and brief with exhibits on the morning of March 27, 2008. (D.I. 252, D.I. 253.)

6. Pursuant to the Administrative Procedures Governing the Filing and Service By Electronic Means, adopted by Order of this Court dated March 1, 2005, "A user whose filing is made untimely as the result of a technical failure may seek appropriate relief from the Court." (Item M.)

7. Here, the refusal of the CM/EFC system to accept Moving Defendants' timely filing resulted from a technical failure. No party will suffer prejudice as a result of Moving Defendants' papers being deemed timely filed. Indeed, the fact that Moving Defendants' motion, brief and exhibits were timely completed and in proper form is evidenced by the fact that they were timely served on March 26, 2008.

WHEREFORE, undersigned counsel respectfully requests that the Court enter an order, in the form attached hereto, determining that the Moving Defendants' Motion for Summary Judgment, and Opening Brief in Support thereof with exhibits, be deemed timely filed with the Court.

WOLFBLOCK LLP

A handwritten signature in dark ink, appearing to read "T.P. McGonigle", is written over a horizontal line.

Thomas P. McGonigle (I.D. No. 3162)

Joseph C. Schoell (I.D. No. 3133)

Wilmington Trust Center

1100 N. Market Street, Suite 1001

Wilmington, Delaware 19801

(302) 777-5860

Attorneys for Defendants Robert N. Gray,
David Moffett and Lance Sagers

March th₂₇ 2008